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SUBJECT: INTRODUCING THE EU VI: EVER-WIDER UNION:
THE ACCESSION PROCESS AND THE EU HOPEFULS

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SUMMARY AND INTRODUCTION

1. Enlargement is one of the EU's "most successful policies" and "a powerful foreign policy tool" for extending a zone of peace and democracy across the European continent. The conditions for joining and the various stages of the accession process, as outlined below, allow for little flexibility to depart from EU standards, rules and practices. The EU has thus been growing from the founding "Six" to the current EU-25. Following the unprecedented accession of ten countries on May 1, 2004, the process is bound to continue: Bulgaria and Romania aim to join at the beginning of 2007; Croatia and Turkey started accession negotiations in October 2005; and Macedonia was granted candidate status at the end of 2005. An even wider Union extending to the whole region of Western Balkans is already in the cards. However, enlargement "fatigue" among EU governments and public opinion could complicate the accession of new members and the issue of the EU's final borders remains an open question.

2. This message - the sixth in a series updating USEU cables of 2003 - is meant to help officers in positions requiring a good knowledge and understanding of the EU machinery. Other cables in this series discuss the history of the European Union; the chief political institutions of the EU (Commission, Council and Parliament); the Presidency and the European Council; the courts, the banks and other bodies; the EU pillar structure and decision-making procedures; and EU-US cooperation under the Transatlantic dialogue. End Summary and Introduction.

AN EVER-GROWING EU

3. Enlargement is often presented by the EU itself as one of its "most successful policies" and "a powerful foreign policy tool," extending a zone of peace and democracy across Europe. Following the expansion from 15 to 25 members on May 1, 2004, the process will continue with further enlargement eastward: Bulgaria and Romania signed their accession Treaty in April 2005 with the aim of joining at the beginning of 2007. Turkey and Croatia formally opened accession talks in October 2005 and the countries of the Western Balkans all share a European perspective.

4. The original six-member group of 1951 (Belgium, France, Germany, Italy, Luxembourg, the Netherlands) has already undergone five successive enlargements (not including the 1991 unification of Germany) to:

- Denmark, Ireland and the UK (1973);
- Greece (1981);
- Portugal and Spain (1986);
- Austria, Finland and Sweden (1995); and
- Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia (2004).

ACCESSION CRITERIA

5. Per the EU Treaty, any European state may apply to become a member of the Union. The Treaty fails to provide any definition of what is meant by a "European state," leaving open the issue of the EU's final borders. (Note: Morocco's application for EU membership was rejected in the early 1980s after the Council determined it was not a "European state." End Note.) Nor does the Treaty lay down detailed political and economic conditions for membership. The first clearly-defined rules for membership were established at a June 1993 meeting of the European Council in Copenhagen and are referred to as the

"Copenhagen criteria":

- Political. Achievement of stable institutions guaranteeing democracy, the rule of law, human rights and respect for minorities;
- Economic. Existence of a functioning market economy and capacity to cope with the competitive pressure and market forces within the EU;
- Administrative. Ability to take on the obligations of membership.

16. The 1995 Madrid European Council established a further requirement that a candidate country must have created the conditions for its integration through the adjustment of its administrative structures. This means that, while it is important that the EU body of law (the "acquis") is transposed into national legislation, it is even more important that the legislation is implemented effectively through appropriate administrative and judicial structures.

HOW TO JOIN THE EU

17. The basic aim of accession negotiations is, indeed, to ensure that the candidate country is able to adopt and implement the "acquis" by the time of accession. New members must abide by the whole "acquis," including the case law of the European Court of Justice. In some cases, where specific difficulties make it impossible for the candidate to apply the "acquis" fully from accession date, the EU can accept transition measures. Derogations take the form of transition periods that the EU grants to a newcomer to bring its legislation and practices in line with the "acquis."

18. In essence, however, the membership criteria are non-negotiable, a key feature for a correct understanding of the enlargement process. Any derogation is strictly limited in scope and duration. Unlike some of the former EU-15, the ten member states that joined in 2004 had no recourse to simply "opt out" of any EU policies, and are committed to eventually join EMU and Schengen. The EU itself can also seek temporary derogations to the application of EU policies to the candidates, such as the free movement of labor into the EU. Workers from the new Central and Eastern European countries did not get immediate access to all EU labor markets after accession.

19. The legal basis for the process of enlarging the Union can be found in the EU Treaty but its various stages have been determined in a piecemeal fashion:

- An application for membership is addressed to the EU Council (the Presidency). After passing it to the Commission, the Council/European Council unanimously pronounces on a Commission's opinion (the "avis"). The Council is not required to follow the Commission's opinion. In the case of Greece, the Council ignored an unfavorable Commission "avis."
- As illustrated by the cases of Turkey, Croatia and Macedonia, the decision to grant an applicant country the status of EU "candidate" does not necessarily imply the immediate opening of negotiations between the EU and the candidate on accession terms. Candidate status is a political recognition of a closer relationship with the EU, but does not automatically mean that the aspirant may hope to join in a near future. To do so, the country needs to reach a sufficient degree of general compliance with the membership criteria. Moreover, the opening of accession talks requires the definition of a negotiating framework for their conduct. This would cover practical arrangements for negotiating sessions, frequency of meetings, chairmanship, etc., but could also address sensitive political issues.
- The accession procedure per se starts with a screening process, i.e. a careful and very detailed analysis by the Commission of the legislation of the candidate country to identify differences with the EU "acquis" that will need to be corrected by the candidate. This is undertaken within the framework of the contractual links between the EU and the candidate country.
- Negotiations on accession terms take the form of a

bilateral inter-governmental conference between the EU member states and the candidate country with the Commission acting as EU negotiating agent. The negotiations take place either at senior official or ministerial-level conferences that address one or several of the policy chapters forming the EU body of law. Talks focus on the terms under which candidates will adopt, implement and enforce the "acquis." The bilateral negotiations cover all policy chapters of EU competence (over 80,000 pages of the "acquis," broken down into "chapters" -- there will be 35 chapters in the negotiations with Turkey and Croatia).

- For each chapter, the Commission makes proposals to the Council for a "common position" of the EU. The EU Council Working Group on Enlargement then reviews draft common positions and refers recommendations to the Council (in practice, the EU PermReps, meeting in COREPER). All decisions on such EU common positions must be reached by unanimity). Only then does the EU formally present its common positions on the chapter in question to the candidate country.
- The negotiating position of the candidate country is specified in a chapter-specific document adopted by the government that explains the state of the country's legislation in that field, the extent to which the "acquis" has been transposed into domestic law or the time limit within which legislation is to be adopted. Where for political, budgetary, economic or social reasons a given provision of the "acquis" cannot become part of domestic legislation before the scheduled accession date, the candidate country may ask for a transition period, specifying its duration and the manner of full transposition. The two sides then come to agreement on each chapter.
- The final accession terms are the subject of an agreement between the EU countries and the applicant. The Treaty of Accession includes an "Accession Protocol" detailing the conditions and arrangements for accession as well as an "Accession Act" covering adjustments to the EU institutions to make room for the new member(s), e.g. voting rights in the Council, number of members in the European Parliament, etc. For those countries that joined in 2004, a single "Accession Treaty" covered the terms of accession for all ten to the EU. The same applies to the accession terms agreed with Bulgaria and Romania.

10. When signed, the Accession Treaty remains subject to a ratification procedure by the EU countries and each candidate country, in accordance with their respective constitutional requirements. It also requires the assent of the European Parliament, which acts by an absolute majority of its members. The completion of such ratification procedures usually takes at least 12-18 months from the end of negotiations and signing of the treaty. EU member states generally do not have a tradition of organizing a referendum on the accession of new countries. However, France, which had made an exception (for the UK) in 1972, reformed its Constitution in 2005 so that its ratification of future EU accession treaties will require the organization of a referendum (Note: this will not cover the accessions of Bulgaria, Romania and Croatia). Although most candidates had no constitutional obligation to organize one, all the countries that joined in 2004 (with the exception of Cyprus) held a referendum on their accession terms.

NOTHING IS AGREED UNTIL EVERYTHING IS AGREED

11. Given the evolving character of the EU body of law, accession negotiations are by no means a static process. The domestic legislation of the candidate country must be further screened to check its conformity with the evolving/amended EU "acquis." In 2000, the EU negotiating positions for ongoing talks with the candidates were themselves subject of a "screening" to check their conformity with the new "acquis" and the EU Council amended its own negotiating positions accordingly.

12. The accession negotiations are governed by other principles. One of them is that each negotiation with a candidate proceeds on the basis of "its own merits." Another is that as long as the negotiations continue and until everything is

agreed, nothing is agreed. In the language of the negotiators, agreement on accession terms for a specific chapter allows that chapter to be "provisionally closed," implying that either side - the EU or the candidate - may come back with questions on the chapter concerned and ask for further clarifications or a reopening of talks on the issue.

¶13. The list of "provisionally concluded" chapters is an easy, but superficial, way to assess the state of play in the accession negotiations. Throughout the negotiations and up to formal accession, the Commission monitors the actual progress made by a candidate in its preparations for membership. Comprehensive assessments of a candidate's preparations are provided by the Commission's annual reports that provide a detailed analysis of the fulfillment of accession criteria. This monitoring is an integral part of the accession process, as progress in the negotiations must be able to rely on progress on the ground.

¶14. The pace of each negotiation therefore basically depends on the degree of preparation by each applicant country and the complexity of the issues to be resolved. For this reason, any precise forecasting of the duration of accession negotiations is a matter for speculation or stated political intention, not of certainty.

BIGGEST ENLARGEMENT EVER

¶15. Following the unprecedented accession of ten members whose level of welfare was well below the EU average, the Union had to cope with wide regional disparities, differences in wage rates and purchasing power. The accession terms for the "Ten" provide for gradual access to the EU's system of direct payments and common market organizations under the Common Agricultural Policy (CAP), EU funding under regional and structural policy instruments (essential means of wealth redistribution), as well as funds to improve nuclear safety, public administration and border protection.

¶16. The EU financial framework for 2007-2013 will allow for such transfers and the accession terms ensure new members will be net beneficiaries in the years following accession, i.e. they will receive more out of the EU budget than they will contribute. The countries that joined in 2004 are not expected to adopt the euro before 2007 at the earliest. In addition to adopting the EU's legislation to ensure that its national central bank is considered independent, a newcomer will also have to demonstrate that its key economic indicators converge with those of the monetary union members.

¶17. All through the negotiating process with Cyprus (Nicosia), the EU refused to directly link accession of the island to a settlement of the intra-community dispute. In the absence of a Cyprus settlement, the application of the "acquis" to the Northern part of the island has been suspended until the Council decides otherwise by unanimous decision.

ACCEDING COUNTRIES

¶18. Bulgaria and Romania, whose accession had been envisaged as part of the wave of enlargement to the countries of Central and Eastern Europe but who were lagging behind, signed their Accession Treaty in April 2005. As we draft this message (beginning of 2006), ratification is still in progress. The EU continues to urge Bulgaria and Romania to address their persisting deficiencies, particularly in the fight against corruption and judicial reform, and to fulfill their commitments to enable accession on the target date of January 1, 2007. The Accession Treaty features a series of safeguard provisions, including a postponement clause allowing the EU to decide, on the basis of a Commission recommendation, that accession be postponed by one year. Such a recommendation would be based on a determination that the state of preparations for adoption and implementation of the "acquis" is such that there is a serious risk of Bulgaria/Romania being manifestly unprepared to meet the requirements of membership by January 2007.

¶19. A Commission assessment of the situation of both countries in May 2006 is expected to be crucial. There is a stated determination on the part of the Commission to conduct a thorough

scrutiny of the implementation of the "acquis" and to invoke the safeguard provisions in case of any persisting difficulty. While commitments will be honored and the final decision by EU governments will be political, the EU appears increasingly determined not to compromise on its principle of "conditionality." The tendency was reinforced with the negative votes on the draft Constitutional Treaty in France and the Netherlands, which fueled calls to slow down the enlargement process.

CANDIDATE COUNTRIES

120. On October 3, 2005, the EU agreed to open accession negotiations with Croatia and Turkey, thus ending months of debate and hesitation on whether both countries had fulfilled their respective requirements. Croatia had received candidate status in June 2004 but the EU made the opening of talks subject to Croatia "cooperating fully" with the International Criminal Tribunal for the Former Yugoslavia (ICTY). Turkey, which first applied to join in 1959 and has been in association with the (then) European Economic Community since 1963, obtained candidate status in December 1999. It took several more years marked by both continued EU calls for further Turkish reforms and protracted differences over the Cyprus issue before accession talks were formally opened. Even so, the EU's negotiating framework specifies that the negotiations with Turkey are "an open-ended process, the outcome of which cannot be guaranteed." (Note: there has been no case in EU history where accession negotiations, once started, have not led to an offer of full membership).

121. As happened with the process of enlargement to the "Ten," the holding of substantive accession talks does not require the closure of a comprehensive screening process. Screening with Turkey and Croatia is expected to last until the fall of 2006 but will not, in theory, prevent the opening of talks on initial chapters to proceed in parallel. Unlike earlier enlargements, this screening will, from the outset, also tackle most complex issues such as agriculture or public procurement.

122. As of early 2006, Turkey and Croatia are having meetings with Commission experts to review the extent to which they have already adopted and implemented the "acquis." As soon as bilateral screening on specific chapters has been completed with either of both countries, the Commission will report to the Council. In the reports, the Commission may make a recommendation to open talks on the individual chapters concerned. In this case, the Commission may set conditions that, in its view, should be met by the candidate country before actual negotiations begin. The Commission already made it clear it might also recommend benchmark conditions for the provisional closure of each of the 35 chapters. While accession talks with Croatia may take a couple of years, EU leaders have said Turkey's accession could not be envisaged before the implementation of the EU financial framework starting in 2014.

123. EU leaders at the end of 2005 granted Macedonia the status of a candidate country, based on a Commission recommendation. No date was set for the actual start of accession negotiations. Setting a date will depend on the country's ability to meet its obligations under the Stabilization and Association Agreement (see below) and to comply sufficiently with the membership criteria. The Commission will continue to assess the progress made by Macedonia and report to the member states. But the decision on candidacy status was a political signal to the whole region of the Western Balkans, reinforcing these countries' European perspective.

POTENTIAL CANDIDATES

124. A much wider EU is, indeed, already in the cards. At the November 2000 Zagreb Summit, leaders from the EU and the Western Balkans countries confirmed their commitment to the Stabilization and Association Process (SAP), a strategy explicitly linked to the prospect of EU accession and adjusted to the level of development of each of the countries concerned. In return for receiving the accession prospect and assistance to achieve it, the five countries (the now EU candidates Croatia and Macedonia, as well as Serbia-Montenegro, Bosnia-

Herzegovina and Albania) undertook to meet the political and economic requirements set for all aspirants. The SAP proved a success in laying foundations for faster reforms. At their June 2003 Summit in Thessaloniki, EU leaders reaffirmed their commitment to the integration of the Western Balkans countries and the SAP was enriched to bring these countries closer to the EU through new instruments such as the European Partnerships, inspired by the Accession Partnerships that had been designed for the countries bound to join in 2004.

125. Depending on the outcome of the UN-sponsored final status talks, Kosovo's further progress toward the EU is also part of the Union's strategy vis-à-vis Western Balkans. European integration is said to be "essential to reinforce the security and stability of the region" and to achieve a sustainable settlement on the status of Kosovo. The EU is also reviewing the situation on Montenegro, stressing that the revision of the Constitutions of the two republics needs to proceed smoothly and in line with European standards.

126. As for the candidate countries, the Annual Report on the Stabilization and Association Process (released in the fall) is a key instrument to assess the readiness of the Western Balkans countries to move closer to the EU. It summarizes progress made during the reference period by the individual countries, monitors the development of regional cooperation and assesses the impact of the Stabilization and Association instruments.

PRE-ACCESSION STRATEGY AND ACCESSION PARTNERSHIPS

127. In order to assist a candidate country to carry out reforms to fulfill the accession criteria and prepare itself for managing and absorbing EU funds after accession, the EU provides financial and technical assistance as part of a pre-accession strategy. The strategy defines for each candidate the short- and medium-term priorities to be met. Pre-accession financial support is devoted to meeting these priorities. Specific EU programs serve this purpose. For the Central and Eastern European countries that joined in 2004, pre-accession financial assistance included instruments such as PHARE (which supported mainly institution building), ISPA (development of environment and transport infrastructure) and SAPARD (agricultural and rural development support). For Cyprus, Malta and Turkey, the EU developed other pre-accession instruments.

128. Pre-accession assistance to Turkey is provided under the EU's new single instrument for financial cooperation. Projects funded under the program will be accession-driven, i.e. targeted as assisting Turkey in complying with the priorities set out in an Accession Partnership. Turkey will carry out these projects with prior approval and/or ex-post evaluation by the Commission, an approach similar to that for all candidates. Like other candidates, Turkey can also obtain loans from the European Investment Bank (EIB).

129. For the countries of the Western Balkans, the Commission proposed a roadmap, setting out the stages and conditions attached to each stage of their "European perspective." Establishing a Stabilization and Association Agreement (SAA) covering both trade/economic and political dialogue aspects of relations with the EU is a fundamental step in this process. Albania was deemed to have made sufficient overall progress to establish implementation capacity, paving the way for negotiations on such an agreement. These negotiations are presently (January 2006) ongoing. Serbia-Montenegro was also deemed prepared to hold SAA negotiations and Bosnia-Herzegovina formally opened negotiations in November 2005. A country's track record in implementing its SAA obligations (including the application of its trade-related provisions in the form of an Interim Agreement) is a key element for the EU to consider any membership application. Based on a Commission opinion, the EU may grant a country the status of candidate. Croatia and Macedonia, which signed a SAA in 2001, have been most successful in using this path on the way to membership.

130. A first set of European Partnerships was approved in 2004: by identifying short and medium-term priorities which the countries need to address, they will help the Western Balkans countries reform and prepare for future membership. New Partnership

Agreements proposed by the Commission in the fall 2005 spelled out the scale of the challenges. Each of the six prospective members is required to make changes toward standards and patterns that are commonplace in the member states. For Turkey, the tasks range from reducing the influence of the military to eliminating torture, and from putting a stop to so-called honor killings to settling border disputes. Even Croatia -- the closest state to EU membership -- is still in the unfinished process of assuring refugee return and resolving border issues arising from the break-up of former Yugoslavia. As for Albania, Bosnia-Herzegovina, Serbia-Montenegro, and Macedonia, the emphasis in the New Partnerships ranges from apprehending war criminals to establishing acceptable electoral systems, and from asserting democratic control of the military to fighting organized crime and corruption.

POTENTIAL MEMBERS OR NOT?

131. A number of other countries cannot be ruled out as potential EU members. Norway applied twice, in 1967 and 1992, but both times a national referendum rejected membership after negotiations were completed. Switzerland applied in 1992 but a referendum the same year on joining the European Economic Area (EEA) failed, forcing Bern to shelve its application. Even Iceland occasionally considered applying.

132. The EU also stated its readiness to enhance relations with close neighbors, including Ukraine, Moldova, Belarus (subject to changes in the latter country's political situation), Armenia, Georgia, Azerbaijan, as well as with its Southern Mediterranean partners. The so-called European Neighborhood Policy (ENP) is depicted as "a key vehicle for promoting our European values, and sharing the fruits of the EU's enlargement to the benefit of our citizens and our neighbors." It is designed to prevent the emergence of new dividing lines between the enlarged EU and its neighbors and to offer these neighbors a chance to participate in various EU activities, through greater political, security, economic and cultural cooperation. Though the ENP offers a privileged relationship, the EU has refrained from making any membership commitment vis-à-vis any of these countries (and rejected Morocco in the 1980's). An indication of this dichotomy is the fact that ENP is part of the portfolio of Commissioner Ferrero-Waldner, who is responsible for the EU's External relations, whereas Enlargement Commissioner Rehn handles relations with the Western Balkans.

COMMENT

133. The pull of the EU has proved to be a powerful leverage for transforming former Communist countries in Europe. The EU countries themselves can only benefit from having neighbors that are democratic and have prosperous market economies. While recognizing their responsibilities in this respect, many EU leaders are concerned that the pace of enlargement increasingly needs to take account of the EU's "absorption capacity." The ongoing expansion is casting doubts on the EU's ability to function as a coherent whole. These questions became only more complex with French and Dutch blockades of a draft Constitutional Treaty that was meant to streamline the EU decision-making process. Should current uncertainties about the EU's constitutional arrangements persist, a "core" group of countries (or several groups, depending on the policy area) may be willing to take steps toward further integration that other members, old and new, will either be unwilling or simply not in a position to take.

134. While stating its willingness to honor commitments, the EU and its leaders appear increasingly determined to ensure that aspirant countries can only proceed from one stage of the accession process to the next once they have strictly met the conditions for that stage. The enlargement package submitted by the Commission in the fall 2005 reflects the need to maintain this delicate balance for which Enlargement Commissioner Rehn is a forceful and persuasive advocate. At the same time, the EU definitely needs to communicate better the objectives and challenges of accession processes, particularly to its own citizens.

135. The basic issues of "deepening" and "enlarging" will come back to the fore during the Austrian Presidency in the first half of 2006. Although neighbors like Ukraine remain anxious to receive positive signals about their European vocation, the "enlargement fatigue" and financial constraints could induce some EU governments to resist any further commitments or the rapid accession of new members. The issue of its final borders, which has always been a "taboo," will increasingly dominate internal EU deliberations.

SAMMIS